INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	4
Conclusion	14

CITATIONS

CASES:

Alcoa Steamship Co. v. *United States*, 80 F. Supp. 158, 338 U.S. 421 11
Blamberg Bros. v. *United States*, 260 U.S. 452..... 9
Calmar S.S. Corp. v. *United States*, 345 U.S. 446..10, 12-13
Canadian Aviator, Ltd. v. *United States*, 324 U.S. 215. 9
Davis, The, 10 Wall. 15 9
Ginsberg & Sons v. *Popkin*, 285 U.S. 204 13
Johnson v. *Fleet Corporation*, 280 U.S. 320.....6, 10
Johnson Lighterage Co., The, No. 24, 231 Fed. 365.... 9
Kepner v. *United States*, 195 U.S. 100 13
Lake Monroe, The, 250 U.S. 246 8
Lykes Bros. Steamship Co. v. *United States* (*Waterman Steamship Co.* v. *United States*), 129 C. Cls. 455, certiorari denied, 348 U.S. 970, 348 U.S. 971.....4, 5, 8
Matson Navigation Co. v. *United States*, 284 U.S. 352. 6, 7
Prudential Steamship Corp. (*States Marine Corporation*) v. *United States*, 220 F. 2d 655 .....5, 11
United States v. *Atlantic Mutual Insurance Company*, 298 U.S. 483 7
United States v. *Jackson*, 302 U.S. 628 13
United States v. *Wilder*, 3 Sumn. 308, 28 Fed. Cas. No. 16694 9

Page

Washington v. *Miller*, 235 U.S. 422 13
Waterman Steamship Corp. v. *United States*, 129 C. Cls. 460, certiorari denied, 348 U.S. 971 5

STATUTES:

28 U.S.C. 1494 13
Public Vessels Act, 43 Stat. 1112, Sec. 1, 46 U.S.C. 781 7
Shipping Act of 1916, 39 Stat. 730, Sec. 9 ..... 8, 9
Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, 46 U.S.C. 741, 742:
Section 1 ..... 2, 6, 8
Section 2 ..... 2, 6, 7, 8, 11

MISCELLANEOUS:

Benedict, *Admiralty* (4th Ed., 1910), Sec. 227 9
H. Rept. 497, 66th Cong., 2d Sess., p. 4 10
H. Rept. 669 (Conference Report), 66th Cong., 2d Sess., p. 5 12
Hearing before the House Committee on the Judiciary, 66th Cong., 1st Sess., on the Attorney General's Substitute for S. 3076 and H.R. 7124, pp. 9-22, 45-48... 10
Lord, *Admiralty Claims against the Government*, 19 Columbia Law Review 467 9
Wright, *Government Ownership and the Maritime Lien*, 7 California Law Review 242..... 9

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 455

AGRICULTURAL INSURANCE COMPANY, A. L. PEIRSON, INC., AMERICAN CHAIN CO., INC., ET AL., *Petitioners*

v.

THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Claims

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Claims (Pet. 15) is reported at 132 F. Supp. 479.

JURISDICTION

The judgment of the United States Court of Claims was entered on July 12, 1955. The petition

for a writ of certiorari was filed on October 10, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the exclusive jurisdiction of the District Courts under Sections 1 and 2 of the Suits in Admiralty Act covers general average claims concerning cargo owned by the United States and carried on a privately operated vessel.

STATUTES INVOLVED

The Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, provides in pertinent part:

> Section 1 (41 Stat. 525, 46 U.S.C. 741):
>
> * * * That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this Act shall not apply to the Panama Railroad Company.
>
> Section 2 (41 Stat. 525, 46 U.S.C. 742):
>
> That in cases where if such vessel were privately owned or operated, or if such cargo

were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. * * *

STATEMENT

According to the allegations of the complaint, the United States shipped certain merchandise on the *S.S. Winslow Homer* from New York and Philadelphia to Gulf ports of the United States. At that time, the *S.S. Winslow Homer,* owned by the United States, was bareboat chartered to the Waterman Steamship Corporation and operated by Pan-Atlantic Steamship Corporation, a wholly owned subsidiary of Waterman Steamship Corporation.

In order to extinguish a fire which broke out during the loading of the vessel in December 1948, extraordinary expenditures had to be incurred, and the property of other shippers was sacrificed for the benefit of all. A general average statement determined that the proportional share of the

United States in these expenditures and losses amounted to $257,285.48. Suit to enforce this alleged liability of the United States was filed in the United States Court of Claims.

A motion by the United States to dismiss the complaint on the ground that the District Courts had jurisdiction over the complaint under the Suits in Admiralty Act, and that the jurisdiction of the Court of Claims was thereby withdrawn, was granted on the authority of the recently decided cases of *Lykes Bros. S.S. Co.* v. *United States,* 129 C. Cl. 455, certiorari denied, 348 U.S. 971; *States Marine Corp.* v. *United States,* 220 F. 2d 655 (C.A. 2) and other controlling precedents (Pet. 15).

ARGUMENT

1. This petition constitutes the fourth effort within the last year[1] to have this Court review the question as to whether the Suits in Admiralty Act generally confers upon the District Courts exclusive and uniform jurisdiction over the typically maritime action for general average contribution with respect to cargo owned by the Government. Petitioners contend that the District Courts' Suits in Admiralty Act jurisdiction is limited to cargo carried on vessels operated by or for the Government, and does not extend to every case of cargo owned or possessed by the Government.

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[1] Two of the previous ones, Nos. 501 and 502, October Term, 1954, were filed by the co-petitioner, Waterman Steamship Corporation.

The corollary of this theory is that government-owned cargo would be subject to seizure in admiralty proceedings where the vessel on which it was carried was not operated by or for the Government.

The Court of Claims, a year ago, rejected the position supported by petitioners and held that all actions for general average contribution on account of cargo owned by the Government came equally within the exclusive jurisdiction of the Admiralty courts, without regard to the mode of operation of the carrying vessel. *Lykes Bros. Steamship Co., Inc.* v. *United States* (*Waterman Steamship Corp.* v. *United States*), 129 C. Cl. 455; *Waterman Steamship Corp.* v. *United States,* 129 C. Cl. 460. This Court last March denied review to those decisions. *Waterman Steamship Corp.* v. *United States* (No. 501), 348 U.S. 970; *Waterman Steamship Corp.* v. *United States* (No. 502), 348 U.S. 971; *Lykes Bros. Steamship Co.* v. *United States* (No. 513), 348 U.S. 971. The United States Court of Appeals for the Second Circuit at the same time agreed with the Court of Claims' interpretation of the Suits in Admiralty Act. *Prudential Steamship Corporation* (*States Marine Corporation*) v. *United States,* 220 F. 2d 655.[2]

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[2] The decision expressly repudiated, as an unwarranted gloss upon the statute, certain *nisi prius* decisions which had adopted an interpretation of the statute similar to the one for which petitioners contend here (220 F. 2d at 657, 658).

We are not aware of any new fact or of any newly discovered consideration tending to indicate that review by this Court is any more justified or required here than in the three above mentioned cases. The decision below is clearly correct; it is in accord with the literal statutory language and with the very purposes which the Suits in Admiralty Act was designed to accomplish.

2. The question presented by this petitioner is whether the Court of Claims had jurisdiction to entertain the instant action. In view of the exclusive nature of the jurisdiction conferred upon the District Courts by the Suits in Admiralty Act[3] this question must be answered in the negative if the instant complaint comes within the scope of Sections 1 and 2 of that Act.

Section 1 of the Suits in Admiralty Act prohibits, in view of the provision for a libel in personam made in Section 2 of the Act, the arrest, or seizure by judicial process, equally of—

1. a vessel *owned by* the United States,
2. a vessel *in the possession of* the United States,
3. a vessel *operated by or for* the United States, and
4. *cargo owned or possessed by the United States.*

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[3] *Johnson* v. *Fleet Corporation*, 280 U.S. 320, 327; *Matson Navigation Co.* v. *United States*, 284 U.S. 352, 356.

Section 2 of the Act provides that a libel in personam may be brought against the United States "in cases where if such vessel were privately owned or operated, or *if such cargo were privately owned and possessed,* a proceeding in admiralty could be maintained." In other words, wherever a cause of action is "characteristically within the admiralty jurisdiction." *Matson Navigation Co.* v. *United States,* 284 U.S. 352, 358.

The subject matter of this action is a claim for general average, "an ancient feature of the maritime law", which if brought against a private party could be maintained by proceedings in rem or in personam in admiralty. *United States* v. *Atlantic Mutual Insurance Co.,* 298 U.S. 483, 488, 489. Petitioner thus seeks to enforce a claim with respect to cargo owned by the United States which, if the property were privately owned, would be enforceable in admiralty. It follows that under the express language of the Act the District Courts have exclusive jurisdiction and that the Court of Claims properly dismissed the complaint.[4]

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[4] *United States* v. *Atlantic Mutual Insurance Co.,* 298 U.S. 483, does not hold to the contrary. The court in that case dismissed a general average claim filed under the Tucker Act for failure to comply with the six year statute of limitations after having determined that the Suits in Admiralty Act was not applicable by reason of the fact that the vessel was in public service (298 U.S. at 488-489). Since the claim accrued on January 19, 1919 (*ibid* at 490), it could not have been adjudicated under the Public Vessels Act which is limited to claims arising after April 6, 1920 (Public Vessels Act, Section 1, 43 Stat. 1112, 46 U.S.C. 781). Thus it has no bearing on the situation presented here where the claim comes within the terms of the Suits in Admiralty Act.

Seeking to avoid this result, petitioners argue that the statute does not mean what it says and that it refers only to cargo carried on vessels operated by or for the United States. This reading of the statute does violence to the statutory language which does not subordinate the cargo clause of the statute to the vessel clauses, but clearly treats all of them as coordinate and independent elements.[5] We know of no consideration which would justify departing from the clear wording of the Act. On the contrary, the legislative background of the Suits in Admiralty Act indicates that it was the very purpose of the Act to exempt all government cargo as well as government vessels from seizure and to substitute an exclusive remedy in personam in the admiralty courts.

The immediate impetus for the enactment of the Suits in Admiralty Act was the decision of this Court in *The Lake Monroe*, 250 U.S. 246, holding that under the waiver of immunity contained in Section 9 of the Shipping Act of 1916 (39 Stat. 730) government merchant vessels had become subject to seizure in admiralty proceedings. It was felt that the drastic in rem proceedings of the maritime law were extremely embar-

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[5] Section 1 " * * * and no cargo owned or possessed by the United States." Section 2 " * * * in cases where *if such vessel* were privately owned or operated, or *if such cargo* were privately owned and possessed * * *." As the Court of Claims observed in the *Lykes* case, these provisions plainly "treat the terms 'vessel' and 'cargo' in the disjunctive" (129 C. Cl. at 459).

rassing as far as the government was concerned and that actions in personam should be substituted for them. *Blamberg Bros.* v. *United States*, 260 U.S. 452, 458-459; *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, 218-219.

Actions under Section 9 of the Shipping Act of 1916, however, were not the only instance in which government property was subject to seizure in admiralty. Libels in rem to enforce maritime claims such as salvage and general average also could be brought against government cargo not in the possession of a government agent. *The Davis*, 10 Wall. 15; *United States* v. *Wilder*, 3 Sumn. 308, 28 Fed. Cas. No. 16694. The potentialities of the seizure of government property in times of national stress were highlighted in 1916 when a libel in rem of munitions belonging to the Russian Government, then at war, was upheld on the authority of *The Davis, supra. The Johnson Lighterage Co. No. 24*, 231 Fed. 365 (D. N.J.).

The very wording of the Suits in Admiralty Act indicates that its draftsmen intended to substitute the libel in personam not only for ship seizures but for cargo seizures and all other instances of essentially admiralty proceedings known to them[6] in

[6] *The Davis*, 10 Wall. 15, was discussed in Benedict, *Admiralty*, 4th Ed. 1910, Section 227, and in two law review articles published in 1919. Wright, *Government Ownership and the Maritime Lien*, 7 California Law Review 242, 247-248, and Lord, *Admiralty Claims against the Government*, 19 Columbia Law Review 467, 477.

which admiralty libels in rem were likely to interfere with governmental operations.[7] Moreover, the enactment of the Suits in Admiralty and Public Vessels Acts point to a Congressional desire to provide for a uniform procedure in the District Courts, "the accustomed forum in matters of admiralty", in all maritime cases in which the United States is subject to suit. *Johnson* v. *Fleet Corporation*, 280 U.S. 320, 327; *Calmar S. S. Corp.* v. *United States*, 345 U.S. 446, 455-456.

The wording of the Act is fully consistent with this underlying legislative policy; it is the petitioner who seeks to "torture" the plain statutory language, and refuse to accord significance to its every word in order to establish a class of cases which, although "characteristically within the admiralty jurisdiction", are not to be heard in the customary admiralty courts when the United States is the defendant,[8] and to expose government

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[7] The bill which became the Suits in Admiralty Act was originally drafted in the Shipping Board and carefully examined and revised by the Department of Justice. Hearing before the House Committee on the Judiciary, 66th Cong., 1st Sess., on the Attorney General's substitute for S. 3076 and H.R. 7124, pp. 9-22, 45-48. H. Rept. 497, 66th Cong., 2d Sess., p. 4.

[8] Petitioners' argument that the two year statutes of limitations of the Suits in Admiralty Act is too short for general average claims because the completion of the general average statement may take four to five years disregards the admiralty practice of trying separately the issues of liability on the merits and the amount of damages. The factual question of whether the ship is entitled to general average needs to be

cargoes to interference by libels in rem.[9]

Similarly, there is no merit to petitioners' contentions based upon the proviso in Section 2 of the Suits in Admiralty Act. That Section reads in pertinent part:

> That in cases where if *such vessel* were privately owned or operated, or if *such cargo* were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, *provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation.* * * * [Emphasis added.]

It appears plainly that the words "such vessel" in the proviso refer logically and grammatically to the terms "such vessel" in the opening part of

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tried with reasonable speed while the witnesses are still available for trial of the merits and the computation of the exact amount due may go on, pending the judicial determination of liability.

[9] As we pointed out above, *supra* p. 5 fn. 2, and as petitioners concede, earlier decisions in the Second Circuit which seemed to support their position were expressly disavowed by the Court of Appeals for the Second Circuit in *Prudential Steamship Corporation* v. *United States*, 220 F. 2d 655. As to *Alcoa Steamship Company* v. *United States*, 338 U.S. 421 (cf. Pet. 9), the complaint was filed within two years after the cause of action accrued and the amount involved was less than $10,000.00 (cf. 80 F. Supp. 158, 163, 167). Thus the District Court had jurisdiction either under the Tucker Act or under the Suits in Admiralty Act, and the case did not present any appealable or substantial jurisdictional issue.

the section and thus have no relation whatever to the cargo clause. The legislative history discloses that the sole purpose of the proviso was "to exclude from the scope of the bill certain public vessels not employed as merchant vessels, but that occasionally carry persons and property for hire, and to make certain that tugboats employed as auxiliaries to the merchant fleet are made subject to the proposed act" (H. Rept. No. 669 (Conference Report), 66th Cong., 2d Sess., p. 5). Petitioners' complex argument that the proviso was designed to limit the cargo clause to cargo carried on vessels operated by or for the government is accordingly without merit. Such a failure of Congress to protect government cargo from seizure is not to be inferred.

As to petitioners' claim that the proviso requires authoritative interpretation, we submit that none is needed beyond the recent unanimous ruling of this Court in *Calmar S.S. Corp.* v. *United States,* 345 U.S. 446. There the Court held that, in interpreting the proviso, consideration should be given to the facts that the District Courts constitute the accustomed forum in matters of admiralty and that the Tucker Act cases in excess of $10,000.00 are relegated to the Court of Claims; that the Suits in Admiralty Act and the Public Vessel Act are not to be considered discrete enactments treating related situations in isolation, hence, that there is no reason why the determination of the proper forum should hinge on minor

factual variations;[10] and that "everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty [than the District Judges]" (345 U.S. at 455). We submit that the court below has applied these considerations properly and that no further guidance by this Court is required.

With respect to petitioners' last argument based upon the 1953 Amendment to 28 U.S.C. 1494 dealing with the jurisdiction of the Court of Claims with reference to amounts due "to or from" the United States (Pet. 10), we submit that the general jurisdictional statute of the Court of Claims is plainly subject to the special legislation of the Suits in Admiralty Act. *Kepner* v. *United States*, 195 U.S. 100, 125; *Washington* v. *Miller*, 235 U.S. 422, 428; *Ginsberg & Sons* v. *Popkin*, 285 U.S. 204; *United States* v. *Jackson*, 302 U.S. 628.

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[10] According to petitioners' theory, actions to enforce general average contribution are to be brought in the District Court, the customary admiralty court, when government owned cargo is carried on a government owned vessel or on a privately owned vessel if it is possessed by, or operated for or by, the government, and the Court of Claims has jurisdiction where the Government is merely an ordinary shipper on a vessel privately owned and operated. Thus the claimant is relegated to the Court of Claims in the situation in which the governmental contacts are the weakest. As this Court pointed out in the *Calmar* case at p. 456, fn. 8, the proviso is to be construed so as to produce the most harmonious results.

CONCLUSION

The decision of the Court of Claims is clearly correct and in accord with controlling decisions of this Court. There is no conflict and no need for further review. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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